IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE V. DHANAPALAN

WRIT APPEAL No.575 of 2001
..

1. Mrs. Zeenath Ariff
2. Mrs. Badrunissa
3. Mr. Sahabudeen
4. Ms. Zareena Ariff .. Appellants/Petitioners

vs.

1. The District Collector
   Sivaganga.

2. The Special Tahsildar
   (Adi Dravidar Welfare)
   Sivaganga. .. Respondents /Respondents

Writ Appeal filed under Clause 15 of the Letters of Patent against the order of the learned Judge Mr. Justice K. Govindarajan, dated 26.06.2000 made in W.P.No.17574 of 1999.

WP No.17574/99: to issue a Certiorarified Mandamus calling for the records relating to the notification relating to the petitioners lands admeasuring 1.07.05 hectares, comprised in Survey No.188/23, in Rasulasamudram Village in Illayangudi North, Illayangudi Taluk, Sivaganga District, published in the District Gazette, Sivaganga, dated 26.5.1999 (Na.Ka.W1/15637/99 dt. 16.5.99) on the orders of the first Respondent herein and quash the same and further forbear the Respondent from taking possession of the said lands from the petitioners herein.

For appellants : Mr. S. Kalyanaraman

For respondents : Mr. M. Dhandapani, AGP(W)

..

JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

The above writ appeal has been filed against the order of the learned single Judge dated 26.06.2000 made inWP.No.17574 of 1999, in which the learned Judge, following the earlier orders of this Court and in view of the proceedings initiated under the Land

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Acquisition Act, 1894 (Central Act) and finding that no notice under Section 4(2) of Tamil Nadu Act (Act 31/78) (in short "the Act" ) was issued, dismissed the said writ petition.

2. Heard the learned counsel for the appellants as well as the learned Additional Government Pleader for respondents.

3. It is not in dispute that in order to provide house sites to Adi Draviders of Rasulasamudram Village, Government of Tamil Nadu initiated acquisition proceedings and issued 4(1) notification and the same was published in the Tamil Nadu Government gazettee Part II Section 2 at page No.19 on 18.05.1988. The same was followed by an enquiry under Section 5-A and declaration under Section 6 of the Act. It is also not in dispute that no award was passed under the Central Act. While so, the Government of Tamil Nadu brought a new legislation called, Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (Act 31/78). The said Act came into force with effect from 25.08.1978. The provisions of the said Act were challenged. A Division Bench of this Court by order dated 09.09.1981, struck down the entire act as being ultra virus the Constitution of India. Aggrieved by the same, State of Tamil Nadu preferred an appeal to the Supreme Court. By order dated 22.11.1994, the Supreme Court in the decision reported in the case of State of Tamil Nadu vs. Ananthi Ammal (AIR 1995 SC 2114), reversed the judgment of the Division Bench of this Court, upheld the entire act, except in so far as the provision providing for payment of compensation amount in installments. As said earlier, the Supreme Court passed the said order on 22.11.1994. In our case, we have already mentioned that notification under Section 4(1) of the Central Act was published in the Tamil Nadu Government gazette dated 18.05.1988. After the judgment of the Supreme Court in Ananthi Ammal's case, the State Government is authorized to invoke the provisions of Tamil Nadu Act 31 of 1978 for implementation of the Harijan Welfare Schemes. In other words, they are not permitted proceed further under the Central Act, if no award is passed in those cases. In the light of the decision of the Supreme Court in Ananthi Ammal's case, the first respondent herein, District Collector, Sivaganga, as a follow up action, invoked the provisions of Tamil Nadu and in view of the earlier proceedings initiated under the Central Act, issued notification in the District gazette under Section 4(1) of the Act. The land owners challenged the said action by way of writ petition in W.P.No.17574 of 1999. The learned Judge, after pointing out that since proceedings were initiated under the Central Act and no award has been passed, no notice under Section 4(2) of the Tamil Nadu Act was required, justified the action taken by the District Collector and dismissed the writ petition.

4. In this regard, it is relevant to refer Section 22 of the Tamil Nadu Act, which speaks about application of the Act to certain pending cases of acquisition.

> "22. Application of the Act to certain pending cases of acquisition. - (1) The provisions of this Act shall apply also to any case or cases in which proceedings have been started before the commencement of this Act for the acquisition of any land for the Harijan Welfare Scheme under the Land

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Acquisition Act, 1894 (Central Act I of 1894) (hereinafter in this section referred to as the said Act) but no award has been made by the Collector under Section 11 of the said Act before such commencement, as if-

(I) The notification published under sub-section (1) of section 4 of the said Act; or

(ii) The declaration made under section 6 of the said Act; or

(iii) the notice given under sub-section (1) of section 9 of the said Act,were a notice to show cause against the acquisition of the land served under sub-section (2) of section 4 of this Act.

(2) Nothing containing in sub-section (1) shall apply in relation to any land unless and until after the District Collector has published a notice in the District Gazette to the effect that the said land is required for the purpose specified in sub-section (1) of Section 4 of this Act. "

5. The above provisions were considered by the Division Bench of this Court in the case of Raju Chettiar vs. The District Collector, Dindigul and another reported in 2005 (1) Vol.148 Page 803. After referring the above provisions, the Division Bench has concluded thus,

"8. A perusal of Section 22 of the T.N. Act makes it clear that where the proceedings for land acquisition have been started under the Land Acquisition Act, 1894 (Central Act) before the commencement of the T.N. Act, but no award has been passed under Section 11 of the Central Act, if notification under Section 4(1) or declaration under Section 6 of the Central Act have been published then it will be deemed that this will amount to a show cause notice under Section 4(2) of the Tamil Nadu Act. Thus, Section 22(1) incorporates a deeming provision, or a legal fiction, which cannot be ignored by the Court. Legal fictions are well known in law.

10. Thus, a notification under Section 4(1) of the Land Acquisition Act, 1894 must be treated as a show cause notice under Section 4(2) of the Tamil Nadu Act. Hence, it cannot be said that no notice was given by the District Collector under Section 4 (2) of the Tamil Nadu Act.

11. Since, we hold that there is no requirement on the District Collector to give a fresh show cause notice in view of Section 22 of the T.N. Act, consequently, there is also no requirement for him

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to furnish a copy of the report of the Special Tahsildar to the petitioner / appellant before issuing the declaration under Section 4(1) of the T.N. Act. "

6. We have already referred to the factual details, particularly the fact that Section 4(1) notification under the Central Act was published in the gazette dated 18.05.1988 and the decision of the earlier Division Bench of this Court striking down the Tamil Nadu Act as well as the order of the Supreme Court in Ananthi Ammal's case upholding the said Act, except one provision. In the light of the same, we are of the view that interpretation of the Division Bench in 2005 (1) Vol.148 page 803 (cited supra) holds the field. Accordingly, we conclude that notification under Section 4(1) of Central Act must be treated as a show cause notice under Section 4(2) of the Act. In such circumstances, there is no requirement on the District Collector to give a fresh show cause notice in view of Section 22 of the Act. In view of the same, the impugned proceedings, viz., publication in the District gazette under Section 4(1) by the District Collector is in consonance with Section 22 of the Central Act as explained and interpreted in the above mentioned decision.

In the light of what is stated above, we do not find any valid ground for interference. Consequently, the appeal fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The District Collector
Sivaganga.

2.The Special Tahsildar
(Adi Dravidar Welfare)
Sivaganga.

+1cc to the Govt. Pleader, High Court, Madras -104 Sr 26729
+1cc to Mr.V.Srinivasan, Advocate Sr 26903

SGL (CO)
km/30.6.

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